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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

NEHEMIAH ROBINSON,  
CDCR #J-71342

Civil No. 08-0161 H (BLM)

11 Plaintiff  
12 vs.

## ORDER:

13  
14 T. CATLETT, Sergeant; GARRETT,  
15 Correctional Officer; W.J. PRICE, Facility  
16 Captain; M.E. BOURLAND, Chief Deputy  
17 Warden; DIRECTOR/SECRETARY OF  
18 CORRECTIONS & REHABILITATION; R.  
19 JOHNSON, Lieutenant; T. OCHOA Chief  
20 Deputy Warden; WHIDMAN, Correctional  
Officer; R. NELSON, Lieutenant; G.J.  
JANDA, Assoc. Warden; D. NORIEGA,  
L.V.N.; J.M. SALGADO, R.N.; M.  
CORREA, Supervising R.N. II; K. BALL,  
Chief Physician/Surgeon;  
V. O'SHAUGHNESSY, Appeal Examiner.

**(1) DISMISSING CLAIMS  
AGAINST DEFENDANTS BALL,  
BOURLAND, CORREA, JANDA,  
NELSON, OCHOA,  
O'SHAUGHNESSY, PRICE,  
SALGADO, TILTON  
(2) DENYING MOTION TO  
DISMISS CLAIMS AGAINST  
DEFENDANTS ARVIZU,  
CATLETT, GARRETT, JOHNSON,  
NORIEGA, and WIDMANN**

21 Defendants

23 This Court has reviewed the Report and Recommendation submitted by the Magistrate Court  
24 on December 12, 2008, and the subsequent Objections filed by the Plaintiff on December 18, 2008.  
25 Having considered both, this Court **ADOPTS** the Report and Recommendation of the Magistrate Judge  
26 as follows:

## Judicial Notice:

28 This Court GRANTS Plaintiff's and Defendants' requests for judicial notice.

1                   **Count 1**

2                   **a.       Eighth Amendment Claims**

3                   This Court GRANTS the motion to dismiss Plaintiff's Eighth Amendment Claims against  
4                   Defendants BOURLAND, PRICE and TILTON.

5                   This Court DENIES the motion to dismiss Plaintiff's Eighth Amendment Claims against  
6                   Defendants ARVIZU, CATLETT and GARRETT.

7                   **b.       Fourteenth Amendment Due Process and Equal Protection Claims**

8                   This Court GRANTS the motion to dismiss Plaintiff's Fourteenth Amendment Claims against  
9                   ARVIZU, BOURLAND, CATLETT, GARRETT, PRICE and TILTON.

10                   **c.       ADA and RA Claims**

11                   **i)       Defendants in their Individual Capacities**

12                   This Court GRANTS the motion to dismiss Plaintiff's Americans with Disability Act ("ADA")  
13                   and Rehabilitation Act ("RA") Claims against ARVIZU, BOURLAND, CATLETT, GARRETT,  
14                   PRICE and TILTON in their INDIVIDUAL CAPACITIES.

15                   **ii)      Defendants in their Official Capacities**

16                   This Court GRANTS the motion to dismiss Plaintiff's ADA and RA Claims against  
17                   Defendants BOURLAND, PRICE and TILTON in their OFFICIAL CAPACITIES.

18                   This Court DENIES the motion to dismiss Plaintiff's ADA and RA Claims against Defendants  
19                   ARVIZU, CATLETT and GARRETT in their OFFICIAL CAPACITIES.

20                   **Count 2**

21                   **a.       Eighth Amendment Claims**

22                   This Court GRANTS the motion to dismiss Plaintiff's Eighth Amendment Claims against  
23                   Defendants OCHOA and TILTON.

24                   This Court DENIES the motion to dismiss Plaintiff's Eighth Amendment Claims against  
25                   Defendants CATLETT, and JOHNSON.

26                   **b.       Fourteenth Amendment Due Process and Equal Protection Claims**

27                   This Court GRANTS the motion to dismiss Plaintiff's Fourteenth Amendment Claims against  
28                   Defendants CATLETT, JOHNSON, OCHOA and TILTON.

### **c. ADA and RA Claims**

**i) Defendants in their Individual Capacities**

This Court GRANTS the motion to dismiss Plaintiff's ADA and RA Claims against Defendants CATLETT, JOHNSON, OCHOA and TILTON in their INDIVIDUAL CAPACITIES.

**ii) Defendants in their Official Capacities**

This Court GRANTS the motion to dismiss Plaintiff's ADA and RA Claims against Defendants OCHOA and TILTON in their OFFICIAL CAPACITIES.

This Court DENIES the motion to dismiss Plaintiff's ADA and RA Claims against Defendants CATLETT and JOHNSON in their OFFICIAL CAPACITIES.

### Count 3

**a. Eighth Amendment Claims**

This Court GRANTS the motion to dismiss Plaintiff's Eighth Amendment Claims against Defendants JANDA and NELSON.

This Court DENIES the motion to dismiss Plaintiff's Eighth Amendment Claims against Defendant WIDMANN.

**b. Fourteenth Amendment Due Process and Equal Protection Claims**

This Court GRANTS the motion to dismiss Plaintiff's Fourteenth Amendment Claims against Defendants JANDA, NELSON and WIDMANN.

### **c. ADA and RA Claims**

**i) Defendants in their Individual Capacities**

This Court GRANTS the motion to dismiss Plaintiff's ADA and RA Claims against Defendants JANDA, NELSON and WIDMANN in their INDIVIDUAL CAPACITIES..

**ii) Defendants in their Official Capacities**

This Court GRANTS the motion to dismiss Plaintiff's ADA and RA Claims against Defendants JANDA and NELSON in their OFFICIAL CAPACITIES.

This Court DENIES the motion to dismiss Plaintiff's ADA and RA Claims against Defendant WIDMANN in his OFFICIAL CAPACITY

1                   **Count 4**

2                   **a.      Eighth Amendment Claims**

3                   This Court GRANTS the motion to dismiss Plaintiff's Eighth Amendment Claims against  
4 Defendants BALL, CORREA, O'SHAUGHNESSY, SALGADO and TILTON.

5                   This Court DENIES the motion to dismiss Plaintiff's Eighth Amendment Claims against  
6 Defendant NORIEGA.

7                   **b.      First Amendment Claims**

8                   This Court GRANTS the motion to dismiss Plaintiff's First Amendment Claims against  
9 Defendants BALL, CORREA, O'SHAUGHNESSY, NORIEGA, SALGADO and TILTON.

10                   **Plaintiff's Official Capacity Claims and Requests for Injunctive and Declaratory Action**

11                   **a.      Official Capacity Claims**

12                   With the exception of the ADA and RA Claims against Defendants ARVIZU, CATLETT,  
13 GARRETT and JOHNSON outlined above, the Court GRANTS the motion to dismiss Plaintiff's  
14 monetary claims against all Defendants in their OFFICIAL CAPACITIES.

15                   **b.      Injunctive and Declaratory Action**

16                   This Court GRANTS the motion to dismiss Plaintiff's request for injunctive and declaratory  
17 relief against ALL DEFENDANTS.

19                   **Conclusion**

20                   As it does not appear reasonable that the Plaintiff can cure deficiencies in this pleading  
21 through the allegation of additional facts, this Court exercises its judicial discretion and  
22 **DECLINES** to grant **LEAVE TO AMEND** the complaint at this time. Lopez v. Smith, 203 F.3d  
23 1122, 1124 (9th Cir. 2000). To the extent that this Order contradicts the Report and  
24 Recommendation, the Report and Recommendation is **OVERRULED**.

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1           **IT IS HEREBY ORDERED** that the remaining Defendants Arvizu, CATLETT,  
2 GARRETT, JOHNSON, NORIEGA, WIDMANN will file their answers with the Court within  
3 **THIRTY DAYS** of the date of this order.

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5 **IT IS SO ORDERED.**

6 DATED: February 25, 2009

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MARILYN L. HUFF, District Judge  
UNITED STATES DISTRICT COURT